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In re Application of :
Martin Gleave et al :
Serial No.: 10/646,391 : PETITION DECISION
Filed: August 21, 2003 :
Attorney Docket No.: UBC.P-035 :

This is in response to the petition under 37 CFR 1.144, filed October 3, 2006, requesting withdrawal of an improper restriction requirement.

DISCUSSION

Applicant's claims on which restriction was based are as follows:

1. A method for treatment of melanoma in a mammalian subject, comprising the step of administering to the subject a therapeutic agent effective to reduce the effective amount of clusterin in the melanoma cells.
6. The method of claim 5, wherein the antisense oligodeoxynucleotide consists essentially of an oligodeoxynucleotide selected from the group consisting of Seq. ID. Nos. 2 to 19.
12. The method of claim 11, wherein the RNA molecule consists essentially of an oligodeoxynucleotide selected from the group consisting of Seq. ID. Nos. 20 to 25.

Applicants argue in M.P.E.P. 803.04 permits election of ten species of oligonucleotides for examination purposes in certain types of applications and that the examiner has given no reasons to limit applicants' election to a single nucleotide. Applicants further argue that the oligonucleotides of claim 6 are not new and are disclosed in WO 00/049937 and US counterpart 2002/0128229, both of which are cited in the specification. Applicants' contention is correct, thus minimizing any burden on the examiner to search more than one sequence.

A correct characterization of the above claims is that claim 1 is a linking claim (as is newly added claim 14) which links each sequence set forth in claim 6 (or claim 11) to it and that the examiner has required restriction between the various sequences set forth and examined the elected sequence for patentability in combination with the linking claim. Having found the elected sequence patentable over the prior art, the linking claim was fully examined for patentability. The examiner has now indicated most dependent claims patentable and, by Advisory Action, independent claim 14, from which all dependent claims depend, patentable.

Having done so, all claims linked by claim 14, including all sequences, must be considered for patentability.

DECISION

The petition is **GRANTED**.

The restriction requirement is withdrawn and all sequences will be considered for patentability.

In view of the above decision and indication of allowability of independent linking claim 14 in the Advisory Action, mailed December 20, 2006, the Final Office action is, of necessity, withdrawn. The application will be forwarded to the examiner for consideration of patentability of all linked claims and their sequences.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number, 571-273-8300.



George C. Elliott.

Director, Technology Center 1600